



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 70

[EPA-R09-OAR-2022-0623; FRL-10031-02-R9]

### Clean Air Act Operating Permit Program; California; San Diego County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** With this direct final rule, the Environmental Protection Agency (EPA) is promulgating approval of revisions to the Clean Air Act Operating Permit Program (title V) of the San Diego County Air Pollution Control District (SDCAPCD or District) in California. The EPA is taking this final action in accordance with Federal regulations and the Clean Air Act (CAA or “Act”).

**DATES:** Effective [Insert date 60 days after date of publication in the Federal Register].

Comments must be received on or before [Insert date 30 days after date of publication in the *Federal Register*].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2022-0623 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional

submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** La Weeda Ward, Permits Office (Air-3-1), U.S. Environmental Protection Agency, Region IX, (213) 244-1812, [ward.laweeda@epa.gov](mailto:ward.laweeda@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” refer to the EPA.

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### **I. Why is the EPA using a direct final rule?**

The EPA is publishing this final rule approving the SDCAPCD’s proposed title V program revisions without prior proposal because we consider it to be a noncontroversial action and anticipate no adverse comments. However, elsewhere in this issue of the ***Federal Register*** publication, the EPA is simultaneously publishing a proposal that will also serve as a public notice of San Diego’s proposed title V program revisions pursuant to title 40 of the Code of Federal Regulations (CFR), section 70.4(i).

### **II. Background**

The CAA Amendments of 1990 include title V, which requires states to develop an operating permits program that meets the Federal criteria codified in 40 CFR part 70. The title V

program requires certain sources of air pollution to obtain Federal operating permits from their respective states. These Federal operating permits improve enforcement and compliance by consolidating all applicable Federal requirements into one federally enforceable document. Before states can issue title V permits, the EPA must approve their programs as amendments to appendix A of part 70. States may submit revisions to their approved programs for EPA approval.

Title V of the CAA applies to “major stationary sources” as defined in title I, part D of the Act. 40 CFR 70.2 and 40 CFR 51.165(a)(1)(iv)(A) base the definition of “major stationary source” on the nonattainment classification of the area where the source is located. Table 1 shows the attainment/non-attainment/unclassifiable status for the applicable national ambient air quality standards (NAAQS) within the District’s jurisdictional boundary. As shown in Table 1, SDCAPCD’s jurisdiction is classified as Severe-15 nonattainment for the 2008 and 2015 8-hour ozone NAAQS.<sup>1</sup> The area is designated attainment/unclassifiable for all other NAAQS. See 40 CFR 81.305.

TABLE 1 – AIR QUALITY ATTAINMENT STATUS

NAAQS Pollutant/Standards	San Diego County  (NA=Non-attainment/Classification, A=Attainment, M = Maintenance, U=Unclassified)
Ozone 2008 8-Hour	NA, Severe-15
Ozone 2015 8-Hour	NA, Severe-15
Nitrogen dioxide (NO <sub>2</sub> )	A/U
PM <sub>2.5</sub> 2012 24-Hour	A/U
PM <sub>10</sub> 1987 24-Hour	A/U
Sulfur dioxide (SO <sub>2</sub> ) 2010 Standards	A/U
Carbon monoxide 1971 Standards	A/U
Lead (pb) 2008 Standards	A/U

The emission thresholds above which a title V operating permit is required pursuant to 40 CFR

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<sup>1</sup> The EPA reclassified the San Diego region to a Severe ozone nonattainment area, effective July 2, 2021. This reclassification to Severe means that a major stationary source is now defined as a source emitting 25 tons or more per year of either oxides of nitrogen or volatile organic compounds. 86 FR 29522 (June 2, 2021).

70.3(a) and 40 CFR 51.165(a)(1)(iv)(A)(1) and (2) are shown in Table 2.

TABLE 2 – TITLE V EMISSIONS THRESHOLDS<sup>a</sup>

Non-Attainment Designation/Classification	VOC or NO <sub>x</sub> (tpy)	CO (tpy)	PM <sub>10</sub> (tpy)
Marginal	100	100	100
Moderate	100	100	100
Serious	50	50	70
Ozone transport region (other than Severe or Extreme)	50		
Severe	25		
Extreme	10		

<sup>a</sup> 40 CFR 51.165(a)(1)(iv)(A).

### III. What are the Requirements for Approval of Revisions to Title V Programs?

Pursuant to 40 CFR 70.4(i), either the EPA or the state may initiate a title V program revision “when the relevant Federal or State statutes or regulations are modified or supplemented.” It is the responsibility of the state to keep the EPA apprised of any proposed modifications to its basic statutory or regulatory authority or procedures. Revision of a state program shall be accomplished as follows:

- a) The state submits a modified program description, Attorney General's statement (if necessary for expanded or additional authority), or other documents as the EPA determines to be necessary. 40 CFR 70.4(i)(2)(i).
- b) After the EPA receives a proposed program revision, it will publish a notice of the proposed change in the ***Federal Register*** and provide for a public comment period of at least 30 days. 40 CFR 70.4(i)(2)(ii).
- c) The Administrator shall approve or disapprove program revisions based on the requirements of 40 CFR part 70 and the Act. 40 CFR 70.4(i)(2)(iii).
- d) The EPA must publish a notice of approval in the ***Federal Register*** for any substantial program revisions. 40 CFR 70.4(i)(2)(iv).
- e) Approval of nonsubstantial revisions may be given by a letter from the Administrator to the Governor or a designee. 40 CFR 70.4(i)(2)(iv).

- f) A program revision shall become effective upon the approval of the Administrator.

40 CFR 70.4(i)(2)(iv).<sup>2</sup>

#### **IV. What is the State’s Proposed Title V Program Revision?**

Table 3 lists the rules submitted as part of the SDCAPCD’s title V program revisions and the dates they were adopted by the District and submitted by the California Air Resources Board (CARB), which is the governor’s designee for California rule submittals.<sup>2</sup>

TABLE 3 - SUBMITTED RULES

Rule Number	Rule Title	Amended Date	Submitted Date <sup>a</sup>
1401	Title V Operating Permits – General Provisions	10/14/2021	1/24/2022

<sup>a</sup> CARB transmitted the submittal to the EPA by a letter dated January 20, 2022.

SDCAPCD revised the definition of “complete application” in Rule 1401 to incorporate Rule 1418<sup>3</sup>, “Action on Applications,” Section (a): Completeness Determination, by reference.

Additionally, SDCAPCD revised the definition of a major stationary source in Rule 1401, Section (c)(26), to incorporate Rule 20.1,<sup>4</sup> “New Source Review—General Provisions,” Section (c)(30), “Federal Major Stationary Source” by reference. Rule 20.1 contains the definition of a “Federal Major Stationary Source” pursuant to 40 CFR 70.2, Definitions, “Major source.”

#### **V. EPA Evaluation of Title V Program Revision**

The EPA finds that the revised definition of a “complete application” aligns with the applicable 40 CFR part 70 elements. The referenced portion of Rule 1418 outlines the components needed to deem an application complete in accordance with the requirements listed in 40 CFR 70.7(a).

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<sup>2</sup> Rule 1401 was amended to revise the definitions of “complete application” and “major stationary source.” A detailed explanation of the EPA’s evaluation of these proposed revisions as well as a change copy of the revised rule can be found in the Technical Support Document (TSD) and docket.

<sup>3</sup> All references to SDCAPCD Rule 1418 refer to the current EPA-approved version of this rule. 68 FR 74871 (December 29, 2003). Any future changes to Rule 1418 that amend Section (a) of this rule will necessitate a conforming amendment to Rule 1401 and a subsequent title V program revision.

<sup>4</sup> All references to SDCAPCD Rule 20.1 refer to the current SIP-approved version of this rule. 87 FR 58729 (September 28, 2022). A correction to this final rule was published on October 27, 2022 (87 FR 65015). Any future changes to Rule 20.1 that amend Table 20.1-5b of this rule will necessitate a conforming amendment to Rule 1401 and a subsequent title V program revision.

The EPA also finds that the revised definition of a “Major Stationary Source” in SDCAPCD Rule 1401, Section (c)(26), is in accordance with the definition listed in 40 CFR part 70.2. As explained in Section II of this Notice, SDCAPCD’s jurisdiction is classified as Severe nonattainment for ozone and designated attainment or unclassifiable for all the other NAAQS. Under the definition of “major stationary source” in 40 CFR 70.2, sources with emission rates equal to or greater than 25 tons of NO<sub>x</sub> or VOC per year that are located in Severe ozone nonattainment areas constitute major sources. Since Table 20.1 – 5b of SDCAPCD’s Rule 20.1 lists these emission rate values in its definition of “Federal Major Stationary Source,” revised Rule 1401 references the appropriate emissions rates for the San Diego Air Basin based on the EPA’s ozone nonattainment classifications.

All of the other revisions to Rule 1401 involve clarifying specific citations to rules that were already incorporated by reference in the previous version of the rule that was adopted on August 13, 2003.

## **VI. Final Action**

As authorized in 40 CFR 70.4(i), the EPA is fully approving the submitted revisions because we find the proposed changes to Rule 1401 align with 40 CFR part 70 program elements. Rule 1401 refers to the correct VOC and NO<sub>x</sub> emission thresholds appropriate for a Severe ozone nonattainment area. Therefore, the proposed changes are approvable as title V program revisions. We do not anticipate adverse comments, so we are finalizing this action without proposing it in advance. However, in the Proposed Rules section of this ***Federal Register***, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments on the proposed revisions by **[Insert date 30 days after date of publication in the *Federal Register*]**, we will publish a timely withdrawal in the ***Federal Register*** to notify the public that the direct final approval will not take effect. The EPA would then address all public comments in a subsequent final rule based on the proposed action. If we do not receive timely adverse comments, this direct final approval will be effective without further notice on **[Insert date of**

**publication in the *Federal Register***]. Pursuant to section 307(b)(1) of the Act, judicial review of this final agency action may be sought by filing a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of publication in the *Federal Register*. We do not plan to open a second comment period on this action, so any parties interested in commenting should do so at this time.

## **VII. Statutory and Executive Order Reviews**

Under the CAA, the Administrator may approve a state title V program submittal that complies with the provisions of the Act and applicable Federal regulations; 40 CFR 70.4(i). Thus, in reviewing title V program submittals, the EPA's role is to approve state choices, provided they meet the criteria of the CAA and the criteria, standards, and procedures defined in 40 CFR part 70.

For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- The state did not evaluate environmental justice considerations as part of its title V program revision submittal. There is no information in the record inconsistent with the stated goals of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples (59 FR 7629, February 16, 1994).

In addition, this action is not approved to apply in Indian country, as defined at 18 U.S.C. 1151, or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. Therefore, this rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the ***Federal Register***. A major rule cannot take effect until 60 days after it is published in the ***Federal Register***. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60**



**days after date of publication in the *Federal Register***]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

**List of Subjects in 40 CFR Part 70**

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

Dated: December 14, 2022.

Martha Guzman Aceves,  
*Regional Administrator,*  
*Region IX.*

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 70—STATE OPERATING PERMIT PROGRAMS**

1. The authority citation for part 70 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended under “California” by adding paragraph (x)(6) to read as follows:

**Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs**

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California

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(x) \*\*\*

(6) The District adopted revisions on October 14, 2021. The California Air Resources Board submitted revisions to the EPA on January 24, 2022. Approval is effective on **[Insert date of publication in the *Federal Register*]**.

[FR Doc. 2022-27725 Filed: 12/22/2022 8:45 am; Publication Date: 12/23/2022]